

HOUSE BILL 1296
By Favors

AN ACT to amend Tennessee Code Annotated, Title 63
and Title 68, relative to banning mandatory
overtime hours for certain employees of a health
care institution.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 11, Part 2, is amended by
adding the following language as a new section:

68-11-259.

(a) As used in this section, unless the context otherwise requires:

(1) "Employee" means an individual employed by a health care facility
who is licensed or certified by the board of nursing and is involved in direct
patient care activities or clinical services and who receives an hourly wage.

(2) "Employer" means an individual, partnership, association, corporation
or person or group of persons acting directly or indirectly in the interest of a
health care institution.

(3) "Health care institution" means any agency, institution, facility or
place, whether publicly or privately owned or operated, which provides health
services pursuant to § 68-11-201(27)(A) and (29)(A).

(4) "On-call time" means time spent by an employee who is not currently
working on the premises of the place of employment, but who is compensated for
availability, or as a condition of employment has agreed to be available, to return
to the premises of the place of employment on short notice if the need arises.

(5) "Reasonable efforts" means that the employer shall:

(A) Seek persons who volunteer to work extra time from all available qualified staff who are working at the time of the unforeseeable emergent circumstance;

(B) Contact all qualified employees who have made themselves available to work extra time;

(C) Seek the use of per diem staff; and

(D) Seek personnel from a contracted temporary agency when such staff is permitted by law or regulation.

(6) "Unforeseeable emergent circumstance" means an unpredictable or unavoidable occurrence at unscheduled intervals relating to health care delivery that requires immediate action; any unforeseen declared national, state or municipal emergency; a disaster or other catastrophic event which substantially affects or increases the need for health care services; or an unpredictable or unavoidable occurrence at unscheduled intervals relating to health care delivery that requires immediate action.

(b) An employee of a health care institution shall not be required to accept work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed twelve (12) hours per day or sixty (60) hours during a seven (7) day period as recommended by the Institute of Medicine except in the case of an unforeseeable emergent circumstance when the overtime is required only as a last resort and is not used to fill vacancies resulting from chronic short staffing and the employer has exhausted reasonable efforts to obtain staffing.

(c) The acceptance by any employee of such work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed twelve (12) hours per day or sixty (60) hours during a seven (7) day period, shall be strictly voluntary and

the refusal of any employee to accept such overtime work shall not be grounds for discrimination, dismissal, discharge or any other penalty or employment decision adverse to the employee; nor shall an employer report or threaten to report an employee to any regulatory agency or licensing authority when employee refuses to work overtime.

(d) The provisions of this section shall not apply in the case of an unforeseeable emergent circumstance when:

(1) the overtime is required only as a last resort and is not used to fill vacancies resulting from chronic short staffing, and

(2) the employer has exhausted reasonable efforts to obtain staffing.

In the event of such an unforeseeable emergent circumstance, the employer shall provide the employee with necessary time, up to a maximum of one (1) hour, to arrange for the care of the employee's minor children or elderly or disabled family members.

(e) The requirement that the employer shall exhaust reasonable efforts to obtain staffing shall not apply in the event of any declared national, state or municipal emergency or a disaster or other catastrophic event which substantially affects or increases the need for health care services.

(f) In the event that an employer requires an employee to work overtime pursuant to subsection (d), the employer shall document in writing the reasonable efforts it has exhausted and keep such report with the employees personnel file.

(g) The provisions of this section shall not apply to on-call time, but nothing in this act shall be construed to permit an employer to use on-call time as a substitute for mandatory overtime.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring

it.

